Sales of service are governed by the provisions of the Service Occupation Tax Act. (See, 35 ILCS 115/1 et seg.). (This is a GIL.)

## December 2, 1999

Dear Ms. Xxxxx:

It was a pleasure speaking with you the other day. This letter is in response to your facsimile of November 10, 1999, The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 (b) and (c), enclosed. I hope that this letter serves as a useful summary of our conversation. In your letter you state:

It was a pleasure speaking with you this afternoon regarding the Service Occupation and Service Use taxes as they apply to pharmacists in the state of Illinois. It would be helpful for me to have a general information letter describing the three models that you explained to me this afternoon. I would like to be able to determine in what situations a pharmacy incurs the Service Occupation Tax and what corresponding tax liability is created for the customer. Also, in what situations does the pharmacy incur the use tax which has no corresponding tax liability created for the consumer. Please direct me to the appropriate statutes and regulations so that I can compile the necessary documentation for my files.

In Illinois, sales of service are governed by the provisions of the Service Occupation Tax Act, 35 ILCS 115/1 et seq. ("the Act"). The Act allows servicemen to choose between several options to calculate their tax liability. Boiled down, a serviceman will incur either Service Occupation Tax liability or Use Tax liability, depending upon what method is used to calculate his tax liability. Generally speaking, the type of tax liability that a serviceman incurs will be determined by whether he falls above or below a specific "de minimis" threshold established in the Act.

If the aggregate annual cost price of tangible personal property transferred as an incident to sales of service is 35% or more (75% or more in the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production) of the aggregate annual gross receipts from all sales of service, the serviceman is considered a "de maximus" serviceman. "De maximus" servicemen incur Service Occupation Tax on their separately stated selling price of the tangible personal property transferred incident to service. If a serviceman does not separately state the selling price of the tangible personal property transferred, he must use 50% of the entire bill to the service customer as the tax base. Both of these methods provide that in no event can the tax base be less than the serviceman's cost price of the tangible personal property

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transferred. See, 35 ILCS 115/3-10. Such servicemen provide Certificates of Resale to their suppliers for the tangible personal property transferred to service customers. Servicemen utilizing either of these methods are authorized to claim any of the deductions authorized under the Service Occupation Tax (e.g., the serviceman can claim an exemption based on sales to exempt entities).

A service customer making purchases from a "de maximus" serviceman incurs a corresponding Service Use Tax liability. Provisions governing the Service Use Tax are found at 35 ILCS 110/1 et seq.. The customer's Service Use Tax liability is required to be collected from the customer by the de maximus serviceman. See Section 3-40 of the Service Use Tax, 35 ILCS 110/3-40.

A "de minimis" serviceman can be contrasted with the "de maximus" serviceman described above. A "de minimis" serviceman is a serviceman whose aggregate annual cost price of the tangible personal property transferred incident to sales of service is less than 35% (less than 75% in the case of servicemen transferring prescription drugs or servicemen engaged in graphic arts production) of his aggregate annual gross receipts from all sales of service. See, Sections 2 (g) and 3-10 of the Service Occupation Tax Act (35 ILCS 115/2 (g), 3-10). The Act provides that once a serviceman elects "de minimis" status, all his sales of service for each fiscal year must be handled by using one of the two de minimis methods described below. He cannot utilize both the "de maximus" and "de minimis" methods on a transaction-by-transaction basis (See, 35 ILCS 115/2(g) and 3-10). If a serviceman meets the "de minimis" definition, he may handle his liability in one of two ways.

The first "de minimis" method can be utilized only by de minimis servicemen that are not otherwise required to be registered as retailers under Section 2a of the Retailers' Occupation Tax Act. Section 2(g) of the Act states that the transfer of tangible personal property to service customers by such servicemen does not constitute a "sale of service." Rather, it provides that the purchase of tangible personal property by such de minimis serviceman for transfer to his service customers shall be subject to tax under the Retailers' Occupation Tax Act and the Use Tax Act. As a result, such de minimis servicemen are authorized to pay Use Tax to their suppliers on the tangible personal property purchased for transfer to their service customers. They generally pay this Use Tax to their Illinois-registered suppliers. However, if their suppliers are not registered to collect the Use Tax, these de minimis servicemen must register in order to selfassess and remit their Use Tax liability to the Department. These servicemen should not provide Certificates of Resale to their suppliers. Such de minimis servicemen are considered the "end users" of the tangible personal property transferred to service customers, and are consequently not authorized to collect "tax " from their service customers. They are not authorized at the present time to claim exemptions based upon the exempt status of their service customers. is our understanding that most drug stores do not qualify to use this method because they are generally required to be registered as retailers under Section 2a of the Retailers' Occupation Tax due to their over-the-counter sale of various medical items and nonprescription drugs.

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The second "de minimis" method can be used by de minimus servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax with respect to a portion of their sales. These de minimis servicemen are authorized to remit Service Occupation Tax, including applicable local taxes, on their cost price of the tangible personal property transferred to their service customers. See 35 ILCS 115/3-10. When purchasing tangible personal property for transfer to service customers, they should provide their suppliers with Certificates of Resale. These de minimis servicemen then regularly file returns and remit tax to the Department. Their customers incur a corresponding amount of Service Use Tax liability, which these de minimis servicemen are required to collect. Servicemen using this method are authorized to claim any deductions provided for in the Service Occupation Tax Act (e.g., exemptions for sales to exempt entities).

I hope that this information is helpful to you in understanding the tax liabilities of your pharmacy stores. The Department maintains a website, which can be accessed at <a href="www.revenue.state.il.us">www.revenue.state.il.us</a>. If you have further information, please feel free to contact me at 217.782.2844.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items (1) through (8) of the enclosed copy of Section 1200.110(b).

Very truly yours,

Jerilynn T. Gorden Senior Counsel

Enc.